

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

In re Estate of JOHN ZIMONICK, Deceased.

---

JOHN P. ZIMONICK, JR., SUSAN ZIMONICK,  
VIRGINIA M. ERICKSON, and PATRICIA  
DREW,

UNPUBLISHED  
June 26, 2003

Petitioners-Appellants,

v

LINDA KILISZEWSKI, Personal Representative  
of the Estate of JOHN ZIMONICK, Deceased, and  
SHEILA GARCIA,

No. 237567  
Ottawa Probate Court  
LC No. 00-049120-DE

Respondents-Appellees.

---

Before: Smolenski, P.J., and Cooper and Fort Hood, JJ.

PER CURIAM.

Petitioners appeal as of right from the trial court's order granting respondents' motion for summary disposition. We affirm.

The decedent executed a will that named respondent Linda Kiliszewski, his daughter, as personal representative of the estate. The principal beneficiaries of the real property of the estate were respondent Kiliszewski and respondent Sheila Garcia, a non-relative friend. The will provided as follows with respect to the real property:

I give and bequeath the property located at 10420 West Olive Road, West Olive, MI, Grand Haven Township, section 26, parcel number 70-07-26-400-019, Grand Haven, MI, County of Ottawa to Sheila K Garcia and Linda L Kiliszewski. With the debt of purchase being paid in full. If my child, Linda L Kiliszewski, does not survive me, then the property is bequeathed to Sheila K. Garcia. If my child Linda L. Kiliszewski survives me, I give and bequeath her share of the property to Sheila K. Garcia. The summer and winter taxes on the property being paid from my estate.

\* \* \*

I give and bequeath the inheritance of the property located at 10460 West Olive Road, West Olive, Michigan, Grand Haven Township, County of Ottawa, Section 26 Parcel numbers 70-07-26-400-018, 70-07-26-400-017, and 70-07-26-400-24 to Linda L Kiliszewski. If my child Linda L Kiliszewski, survives me, I give and bequeath her share of the property to Sheila K. Garcia. The summer and winter taxes on this property being paid from my estate.

Petitioners, decedent's four other children, objected to the submission of the will to the probate court, alleging that the provisions of the will governing disposition of the real property were void and disposition should occur through the laws of intestacy.<sup>1</sup> Petitioners were named in the will as beneficiaries with respect to any remaining personal or real property.

Respondents moved for summary disposition, alleging that the decedent clearly intended to bequeath the real property to either one or both women. It was clear that decedent did not intend for petitioners to receive any portion of this real property. Therefore, respondents' contractual agreement to pass the property to respondent Garcia was in accordance with decedent's intent. Petitioners requested that the trial court, as a matter of law, declare the provisions void based on the contradictory language regarding receipt of the property if survivorship occurred.<sup>2</sup> The trial court granted respondents' motion for summary disposition, concluding that construction of the will was not required and decedent intended for respondents to share the property equally. The trial court gave effect to respondents' agreement to pass the property to respondent Garcia.

Petitioners allege that the disputed real property provisions were void and could not be disposed of by respondents' written agreement. We disagree. The probate court's analysis of the language of a will that does not involve factual findings presents a question of law reviewed de novo on appeal. *In re Bem Estate*, 247 Mich App 427, 432-433; 637 NW2d 506 (2001). When interpreting wills, the primary purpose is to give effect to the testator's intent. *Id.* This is accomplished by examining the will as a whole and harmonizing all provisions to effectuate the intent. *Id.* The four corners of the will are examined to carry out the intent of the testator. *In re Kremlick*, 417 Mich 237, 240; 331 NW2d 228 (1983). If an ambiguity is presented, intent may be established by considering two outside sources: (1) surrounding circumstances and (2) rules of construction. *Id.* Under the rules of construction, intention must be ascertained from consideration of all the will provisions and in light of the circumstances surrounding the testator at the time of execution of the will and the testator's relationships with the objects of his bounty. *In re Scheyer's Estate*, 336 Mich 645, 648-649; 59 NW2d 33 (1953). A patent ambiguity exists

---

<sup>1</sup> An additional claim of undue influence was dismissed by stipulation of the parties.

<sup>2</sup> The circumstances surrounding creation of the will were unknown. Decedent's usual attorney did not prepare the will. At the hearing regarding summary disposition, plaintiff's counsel advised the probate court that there were no witnesses who could be called to address the objection to the will at the trial scheduled for the following week. Consequently, plaintiff's counsel asked the trial court to rule, as a matter of law, regarding the meaning of the provisions of the will. At the hearing, it was also conceded that petitioners were not named as recipients of the disputed real property.

if the uncertainty regarding intent appears on the face of the instrument based on the language used. *Kremlick, supra*.<sup>3</sup> Petitioners do not challenge the validity of the will. The present case involves a patent ambiguity regarding disposition of the West Olive Road properties.

While the terms of the paragraphs at issue are conflicting, the intent of the decedent is unambiguous. Decedent intended for the properties to pass to either one or both of the respondents and not to any other takers under the residuary clause. The language utilized to describe the properties is specific. Respondents are the only two named beneficiaries with respect to this real property. To rule in favor of petitioners, who are named in the will with respect to any remainder, would clearly undermine decedent's intent. Having concluded that decedent intended for the property to pass to either one or both respondents,<sup>4</sup> respondents were free to enter into a written agreement to divide the property. MCL 700.3914. Accordingly, the trial court did not err in granting respondents' motion for summary disposition.<sup>5</sup> *Bem, supra*.

Affirmed.

/s/ Michael R. Smolenski

/s/ Jessica R. Cooper

/s/ Karen M. Fort Hood

---

<sup>3</sup> A latent ambiguity occurs where the language used is clear and intelligible, but extrinsic facts or evidence indicate the possibility of more than one meaning. *Kremlick, supra*. A latent ambiguity is not at issue in this case.

<sup>4</sup> Our review was limited to the construction of the will itself because the parties did not submit documentary evidence addressing decedent's relationships with his children. See *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

<sup>5</sup> The probate court concluded that the provisions governing real property were not contradictory, and it was unnecessary to apply the rules of construction. We will not reverse a trial court's order if it reaches the right result for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001).